

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

REMINGTON LODGING &
HOSPITALITY, LLC D/B/A HYATT
REGENCY WIND-WATCH, A SINGLE
EMPLOYER WITH HHC TRS FP
PORTFOLIO, LLC, A SUBSIDIARY OF
ASHFORD HOSPITALITY TRUST, INC.

and

Case Nos. 29-CA-093850
29-CA-095876

LOCAL 947, UNITED SERVICE
WORKERS UNION, INTERNATIONAL
UNION OF JOURNEYMEN AND ALLIED
TRADES

**GENERAL COUNSEL’S REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Counsel for the General Counsel offers this Reply in support of its Motion for Partial Summary Judgment (“Motion”) in response to the Notice to Show Cause issued by the National Labor Relations Board (“Board”) in the above-captioned cases on October 11, 2018. As demonstrated fully below, Respondent Remington Lodging & Hospitality, LLC (“Respondent”) has not – and cannot – establish any basis for the Board to deny the General Counsel’s Partial Summary Judgment Motion. Accordingly, Counsel for the General Counsel urges the Board to grant the General Counsel’s Motion and find that Respondent’s deficient pleadings in this case compel partial summary judgment in accordance with the Board’s Rules and Regulations.

I. Procedural History

On February 12, 2016, the Board issued its Decision and Order in this case, finding that Respondent had committed numerous unfair labor practices and directing Respondent to, among

other things: (a) offer the housekeeping employees employed at the Hyatt Hotel in Hauppauge, New York as of August 20, 2012, full reinstatement to their former jobs; (b) offer the housekeeping employees employed at the Hyatt hotel in Hauppauge, New York as of October 19, 2012, full reinstatement to their former jobs; (c) offer Margarate Loiacono full reinstatement to her former job; (d) make the employees whole for any loss of earnings and other benefits resulting from discrimination against them, less any net interim earnings, plus interest; and (e) compensate the employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award. On January 27, 2017, the United States Court of Appeals for the Fifth Circuit entered its Judgment enforcing in full the Board's Decision and Order.

On June 1, 2018, the Regional Director for Region 29 of the Board issued a Compliance Specification and Notice of Hearing ("Specification").¹ The Specification included an "Answer Requirement," which specifically advised Respondent that it must state in detail the basis for any disagreement with the Specification's allegations and support its position with appropriate alternative figures, and that Respondent's failure to detail and support its disagreement may result in the Board finding the allegations to be true and precluding Respondent from introducing evidence to contradict those allegations.

On June 29, 2018, Respondent filed its Answer to the Specification ("Answer"). The Answer denied certain allegations set forth in the Specification. However, in response to the allegations set forth in paragraphs IV(A), (B), and (C) of the Specification regarding the gross backpay amounts owed to the discriminatees, Respondent failed to comply with the Answer

¹ The Specification names 54 individuals who, together, comprise the various classes of discriminatees described in the Board's Decision and Order, classifying the 39 discriminatees employed at the Hyatt as of August 20, 2012 as "Group A" and the 14 discriminatees employed at the Hyatt as of October 19, 2012, as "Group B." The Specification separately classifies discriminatee Margaret Loicano.

Requirement by pleading only vague, general denials.² Furthermore, Respondent failed to specify its disagreement with the General Counsel's calculations, failed to set forth Respondent's own computations or provide an alternative theory as to how gross backpay should be calculated, in clear derogation of the Board's Rules and Regulations.

On August 2, 2018, Counsel for the General Counsel filed the instant Motion for Partial Summary Judgment requesting that the allegations set forth in paragraphs IV(A), (B) and (C) of the Specification be deemed true, without the taking of evidence in support of those allegations, because Respondent's Answer to these allegations failed to comply with Section 102.56 of the Board's Rules and Regulations. In its Motion, the General Counsel further requests that Respondent be precluded from introducing any evidence to controvert the General Counsel's allegations concerning the appropriateness of the computation of gross backpay.

On October 9, 2018, Respondent filed a Response in Opposition to the General Counsel's Motion ("Opposition"). Respondent's Opposition provided no basis for the Board to deny the Motion. Thus, on October 11, 2018, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause ("Notice to Show Cause") inviting Respondent to demonstrate, in writing, on or before October 25, 2018, good cause as to why the General Counsel's Motion should not be granted. The Board further directed that any brief or statement in support of the Motion be filed by the same date. This Reply in Support of the General Counsel's Motion for Partial Summary Judgment is hereby filed pursuant to the Board's October 11, 2018 Notice to Show Cause.

² Respondent generally denied that the Specification's use of employees' average bi-weekly earnings computed on a quarterly basis as the measure of gross backpay was appropriate. Additionally, Respondent stated that it denies each allegation contained in paragraphs IV(A), (B) and (C) of the Specification and insists that the General Counsel meet his burden of proof. Respondent stated nothing further in support of these denials.

II. General Counsel's Motion Is Well-Grounded in Board Law

Partial summary judgment as requested in the General Counsel's instant Motion is required pursuant to the Board's Rules and Regulations. Section 102.56(b) of the Board's Rules and Regulations clearly and unequivocally requires Respondent in this compliance proceeding to "*specifically* admit, deny, or explain each allegation of the specification" (emphasis added). Particularly regarding "matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial will not suffice." Instead, if Respondent denies either "the figures in the specification or the premises on which they are based," Section 102.56(b) compels Respondent to specifically state in its answer "the basis for such disagreement, setting forth *in detail* Respondent's position and furnishing the appropriate supporting figures" (emphasis added).

Moreover, under Section 102.56(c) of the Board's Rules and Regulations, if Respondent files an answer in which it fails to deny the allegations of a compliance specification with the detail and specificity required by Section 102.56(b), those allegations "shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation." Thus, Section 102.56(c) compels the Board to grant summary judgment as to all allegations in the compliance specification that Respondent has not properly answered in accordance with the specificity requirements of Section 102.56(b). *Shenandoah Coal Co.*, 312 NLRB 30, 31 (1993).

The General Counsel's Motion simply asks the Board to apply the provisions of Section 102.56(b) and (c) described above. The General Counsel seeks summary judgment as to paragraphs IV(A), (B) and (C) of the Specification, which set forth the General Counsel's

methodology and calculations for determining gross backpay. In its Answer, Respondent merely states in response to paragraph IV(A) that it “denies that the appropriate measure of backpay due to the discriminates [sic] during the backpay period is the average bi-weekly earnings computed on a calendar quarterly basis.” The only other pleading Respondent avers in response to paragraphs IV(A), (B) and (C) is the rote, general denial that “Respondent denies the allegations...[and] asserts that Counsel for the General Counsel meet his or her burden of proof.” Respondent fails to meet the requirements of Section 102.56(b) in several ways; Respondent does not specifically state the basis for its denials and offers no alternative backpay figures, formulas, or methods of calculation. Accordingly, the General Counsel urges the Board to grant summary judgment as to the gross backpay allegations of the Specification, deem them to be admitted to as true, without the taking of evidence supporting these allegations, and preclude Respondent from introducing any controverting evidence, pursuant to Section 102.56(c).

A. The Board Routinely Grants Summary Judgment In Analogous Circumstances

Under Board law, “It is well settled that a respondent’s general denial of the backpay computations contained in a compliance specification will be deemed insufficient if the answer fails to specify the basis for the disagreement with the backpay computations contained in the specification, fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so.” *Mining Specialists, Inc.*, 330 NLRB 99, 101 (1999). Furthermore, the Board has repeatedly granted summary judgment where, as here, a respondent in a compliance case pleads the sort of meaningless, general denials that Respondent has pled in its Answer. For example, in *Carnival Carting, Inc.*, 345 NLRB 910 (2005), the Board granted the General Counsel’s motion for partial summary judgment as to the allegations concerning the discriminatee’s backpay period and the amounts owed to him, finding that these matters were plainly within the respondent’s knowledge

and that its “general denials” regarding these matters were inadequate under Section 102.56(b) and (c). *Id.* at 911. The Board granted summary judgment because the respondent “failed to furnish supporting figures or fully set forth its position regarding the applicable premises.” *Id.*

Similarly in *Shenandoah Coal Co.*, the Board granted summary judgment where, as here, the respondent failed to specifically state its disagreement with the General Counsel’s gross backpay calculations and neglected to define its position as to the applicable premises for determining gross backpay, or to include appropriate supporting figures. 312 NLRB at 30-31. While the respondent in *Shenandoah Coal Co.* pled in its answer that the General Counsel’s formula and figures to compute gross backpay were inaccurate because the employees used as a basis for its calculations were “not representatives,” the respondent failed to substantiate its claim that the chosen employees were not representative. In addition, the respondent in *Shenandoah Coal Co.* generally denied the accuracy of the wage increases that the General Counsel factored into its gross backpay calculation, without substantiating its denial. *Id.* The Board held that the Respondent’s pleadings were grossly inadequate under Section 102.56(b) and (c) because the respondent failed to explain the basis for its stated positions or to provide alternative figures or calculations. *Id.* (citing *Best Roofing Co.*, 304 NLRB 727, 728 (1991)).

As in *Carnival Carting, Inc.* and *Shenandoah Coal Co.*, Respondent’s answer in the present case is grossly inadequate, as Respondent has utterly failed to set forth the basis for its general denials concerning the Specification’s gross backpay calculations. Respondent’s only particular contention in response to paragraph IV of the Specification is its claim the average bi-weekly earnings computed on a calendar quarterly basis is not the appropriate measure of backpay. However, like the respondents in *Shenandoah Coal Co.* and *Carnival Carting, Inc.*, Respondent provides absolutely no alternative method of calculation, no figures representing the supposedly correct amounts owed, and no explanation of Respondent’s disagreement with the

premises on which the Specification's calculations are based. Respondent in this case provides even less specificity than that which the respondent in *Shenandoah Coal Co.* had pled, as Respondent does not even allege that the employees used by the General Counsel as a basis to calculate gross backpay are not representative, or that the wage increases factored into the Specification's computations are inaccurate. The Board easily held that the respondent's answer in *Shenandoah Coal Co.* was inadequate under Board Rules and Regulations, and it should readily make the same determination regarding Respondent's pleadings here.

By failing to specify its position with respect to the calculation of gross backpay, Respondent has failed to raise a litigable issue of fact to be resolved at the upcoming Compliance hearing. Under these circumstances, the Board holds that summary judgment is required. *Shenandoah Coal Co.*, 312 NLRB at 31 (where the respondent's "answer does not set forth what the Respondent believes the hours and rates of pay for the discriminatees should have been calculated to be and the basis for that calculation," General Counsel is entitled to summary judgment as to those matters); *Francis Building Corp.*, 330 NLRB No. 48 (1999) (respondent's failure to provide supporting figures or specify the basis for its disagreement with the accuracy of the General Counsel's premises and figures pertaining to gross backpay calculation results in summary judgment). The General Counsel's Motion is thus well-grounded in Board law and must be granted pursuant to Section 102.56(c).

III. Respondent's Opposition Fails to Explain or Rectify the Deficiencies of Its Answer

Respondent's Opposition to the General Counsel's Motion for Partial Summary Judgment does nothing to remedy Respondent's obviously deficient Answer. Instead of complying with Section 102.56(b), Respondent's asks the Board to disregard its own Rules and Regulations and apply a wholly different standard of pleading under the Federal Rules of Civil Procedure ("FCRP"). Additionally, Respondent argues that it lacks knowledge of the

information pertaining to the various factors entering into the computation of gross backpay. Neither of Respondent's arguments renders summary judgment inappropriate in this case, as the Board's Rules and Regulations – not the FRCP – control the pleading standards in these compliance proceedings. Furthermore, Respondent plainly has the requisite knowledge to make its own gross backpay calculations but has simply failed to do so, or to specifically plead any such alleged lack of knowledge.

A. Respondent Incorrectly Relies on the Federal Rules of Civil Procedure

In its Opposition, Respondent primarily argues that summary judgment is inappropriate in this case because its Answer supposedly meets the standards of pleading established under the FRCP. The argument is a complete red herring, as Board law makes clear that it is the Board's Rules and Regulations – not the FRCP – that govern the pleading requirements in proceedings before the Board. The Board has long held that “the Federal Rules of Civil Procedure are applicable to Board proceedings only with respect to the introduction of evidence and not with respect to pleadings before the Board.” *Armstrong Cork Co.*, 112 NLRB 1420 (1955); see also *Component Bar Products*, 364 NLRB No. 140, slip op. at 10 (2016) (“Board proceedings are governed by the Administrative Procedures Act and the Board's Rules and Regulations, not the FRCP”). Moreover, “Where the Board has its own procedures, that are established by the Act, by Board rule or Board decision, the FRCP does not apply to vary the Board practice.” *The Boeing Co.*, 2011 WL 2597601 (NLRB Div. of Judges) (citing *Control Services*, 303 NLRB 481 (1991) (holding that FRCP does not govern service requirements in Board proceedings where the Board provides its own procedures)).

Despite these long-established principles, Respondent attempts to validate its pleadings, which are plainly deficient under the Section 102.56(b) of the Board's Rules and Regulations, by

relying on the FRCP and federal court holdings interpreting them. The Board should flatly reject Respondent's misguided effort to have the Board apply the wrong standard of pleading and evade the plain requirements of Section 102.56(b). There is no basis for the Board to find that summary judgment is not appropriate in this case because Respondent's Answer allegedly complies with the FRCP, as whether or not Respondent's Answer complies with the FRCP is simply not relevant here.

B. Respondent is in Exclusive Possession of the Figures and Other Information Necessary to Calculate Backpay

In its Opposition, Respondent additionally asserts that it is not in possession of the figures necessary for it to calculate the backpay for the discriminatees identified in the Specification as comprising "Group B" because these individuals never worked for Respondent. Respondent contends that since these discriminatees only worked for its subcontractor HSS, there is no way for Respondent to formulate backpay figures, since it does not have HSS's payroll records.

Respondent's contention in this regard is plainly baseless and interposed only to confound and delay these proceedings. The Board's Decision and Order in this case makes clear that Group B is entitled to reinstatement and backpay based on Respondent's failure to hire them. Consequently, the General Counsel based its backpay calculations for Group B on what Respondent would have paid these discriminatees had they been properly hired by Respondent. Thus, the Specification clearly states that backpay calculations for Group B discriminatees are premised on the average wages and hours of Respondent's own employees. Particularly, the Specification at paragraph IV(B), page 11 states that the gross backpay for Group B discriminatees is based on the average regular and overtime hours of Respondent's Housekeeping employees Maria DaSilva, Maria Garcia, and Maria Amaya. Moreover, the

Specification calculates Group B gross backpay using the \$8.75 per hour wage rate, which reflects the starting wage offered by Respondent in its offers of reinstatement made to certain discriminatees. Nothing in the Specification states that the General Counsel's computations rely upon the hours worked or the wages earned by HSS employees. To the contrary, the calculations are premised entirely on information pertaining to Respondent's own employees.

Respondent's contention that it does not possess the necessary information to plead alternative figures or methods of calculation is patently false. Respondent has all the information it needs to comply with the requirements of Section 102.56(b), as Respondent surely possesses records establishing the hours and earnings of its own employees. Indeed, Section 102.56(b) itself declares that "matters within the knowledge of the respondent" necessarily include "the various factors entering into the computation of gross backpay." Respondent here does not need any information from HSS to calculate the gross backpay owed to the discriminatees identified in Group B in the Specification. Respondent is in complete control of all data it would need to properly contest the General Counsel's allegations set forth in Specification paragraph IV(B) regarding Group B, in accordance with Section 102.56(b). Respondent's failure to comply with the Board's Rules and Regulations cannot be excused by its disingenuous claim that it lacks the necessary information to calculate backpay.

C. Respondent Fails to Specify Its Disagreement with the Identities of the Discriminatees And the Backpay Periods Used to Calculate Gross Backpay

In its Opposition, Respondent vaguely contends that certain unspecified discriminatees named in the Specification are not entitled to receive any remedy because they never worked for Respondent. Respondent also denies the accuracy of the backpay periods on which the Specification's gross backpay figures are based because they do not account for certain unidentified offers of reinstatement. Here again, Respondent makes this argument without

stating which backpay periods used in the calculation are supposedly wrong, or what Respondent believes the applicable periods should be. The identities of the discriminatees and the periods during which they accrued backpay are both considerations inherent in the General Counsel's gross backpay calculations set forth at paragraphs IV(A), (B) and (C) of the Specification. Thus, Respondent once more violates the mandates of Section 102.56(b), which require Respondent to "specifically state the basis" for its disagreement with any of the premises underlying the gross backpay calculations.

The principle establishing that Respondent must specify any dispute it has with the premises underlying the Specification's gross backpay figures – including the duration of the backpay period and the identities of the discriminatees – is well-founded in Board precedent. For example, in *Emsing's Supermarket*, 299 NLRB 569 (1990), the Board found that matters pertaining to the duration of the backpay period were among the "various factors entering into the computation of gross backpay," and because the respondent in that case offered only a general denial regarding the duration of the backpay period, the Board granted the General Counsel's summary judgment motion. *Id.* at 570.

The same principle applies to Respondent in the present case. If Respondent disputes the backpay periods used to calculate gross backpay in paragraphs IV(A), (B) and (C) of the Specification, then Board law requires Respondent to state which discriminatee's alleged backpay period is inaccurate, what basis Respondent has for believing the period stated in the Specification is wrong, including whether and when a valid offer of reinstatement was allegedly made, and to further provide an alternative applicable period. Respondent has failed to meet these clear requirements and instead, ambiguously claims that certain unspecified offers of reinstatement tolled the backpay periods in ways that are not reflected in the Specification. Respondent offers no specific factual allegations to support this unfounded claim.

Contrary to Respondent's baseless assertion, the Specification plainly reveals that in calculating gross backpay, the General Counsel considered the reinstatement offers that Respondent made to the discriminatees, where applicable. The Specification tolls backpay for most of the discriminatees on dates occurring in Calendar Year 2013, when the named discriminatee received a valid offer of reinstatement. The backpay periods run into 2018 and continue to the present for only a limited number of the discriminatees, confirming that the Specification does indeed account for Respondent's reinstatement offers. Regardless, under Section 102.56(b), Respondent must provide far more details explaining its position concerning the alleged reinstatement offers in order to make it a litigable issue. Contrary to the Rule, however, Respondent fails to state which of the discriminatees' backpay periods are wrongly stated in the Specification and offers no allegations regarding any reinstatement offers not reflected in the Specification.

Likewise, if Respondent disputes the identities of the discriminatees named in the Specification, or whether they are properly included in the class of discriminatees identified in the Board's Decision and Order, Respondent is obliged to state which individuals should be excluded and on what basis. Respondent's failure to provide such specific support for the general denials asserted in its Answer and the vague assertions stated in its Opposition compels the Board to grant the General Counsel's Motion for Partial Summary Judgment under Section 102.56(c).

D. Respondent Improperly Attempts to Narrow the Class of Discriminatees and Re-Litigate the Liability Portion of this Case

Respondent ambiguously asserts in its Opposition that certain unidentified discriminatees named in the Specification should not be included in these proceedings, even though the named discriminatees are all part of the class of employees whose rights Respondent violated, according

to the Board's Decision and Order in the underlying unfair labor practice proceedings. In particular, Respondent claims that the General Counsel "cannot include" individuals who (1) were never employed by Respondent; (2) were employed by Respondent but failed to obtain employment with Respondent's subcontractor HSS; or (3) were never employed by either Respondent or HSS. Respondent here is improperly seeking to restrict the number of discriminatees in this case in a manner that runs contrary to the Board's Decision and Order. Further, Respondent's failure to identify the individuals who should be excluded from the Specification once again contravenes the specificity requirements of Section 102.56(b). Respondent must not be permitted to re-litigate the scope of its unfair labor practice liability at this stage of the case, and its pleadings and Opposition have created no litigable dispute as to the identities of the discriminatees named in paragraph IV of the Specification.

1. *Discriminatees Identified as Part of Group B in the Specification Are Entitled to Backpay, Regardless of Whether They Worked for Respondent*

Respondent argues that employees who "were never employed by Respondent" must be excluded from these proceedings and are not entitled to any remedy. This is plainly contrary to the Board's Decision, and by making this assertion, Respondent is improperly attempting to re-litigate its liability with respect to these discriminatees. In its Decision and Order in this case, the Board found that Respondent, on October 19, 2012, unlawfully refused to hire the housekeeping employees working at the Hyatt hotel in Hauppauge, New York as of that date. Many of the employees in this classification were never employed by Respondent directly, but instead were employed only by Respondent's subcontractor HSS. These individuals are identified as "Group B" in paragraph IV(B) of the Specification. The Board's finding that Respondent violated the Act by refusing to hire these individuals renders irrelevant the fact that the Group B employees did not previously work for Respondent. Respondent violated these

employees' rights by refusing to hire them on October 19, 2012 and now owes each of them backpay, regardless of whether they had previously worked for Respondent.

Respondent cannot escape liability for these individuals' backpay by attempting to litigate their inclusion in this compliance proceeding, as the issue of liability has already been conclusively resolved by the Board and the U.S. Court of Appeals. See *Transport Service Co.*, 314 NLRB 458, 459 (1994). ("Issues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding") (citing *Baumgardner Co.*, 298 NLRB 26, 27-28 (1990), *enfd.* mem. 972 F.2d 1332 (3d Cir. 1992); see also *Best Glass Co.*, 280 NLRB 1365, 1367 (1986); *Sumco Mfg. Co.*, 267 NLRB 253, 255 (1983), *enfd.* 746 F.2d 1189 (6th Cir. 1984), *cert. denied* 471 U.S. 1100 (1985)).

If Respondent lacks knowledge with respect to whether any of the Group B employees were in fact employed by HSS at the Hyatt as of October 19, 2012, then the Board's Rules and Regulations require Respondent to state that in its Answer. However, Respondent does not state in its Answer that it is without knowledge as to whether any particular named discriminatee was employed at the Hyatt on the relevant dates when Respondent committed the unfair labor practices found by the Board. Its failure to make such a pleading once again flouts the requirements of Section 102.56(b), which compel Respondent affirmatively state that it lacks knowledge regarding the allegations made in the Specification.

Rather than making a precise pleading as mandated by the Board's Rules and Regulations, Respondent's Answer again offers only a vague, general denial. Compounding the error of its pleadings, Respondent fails to use its Opposition to offer a detailed explanation of which specific discriminatees named in the Specification are not properly included in the classes of discriminatees identified in the Board's Decision and Order. Instead, Respondent attempts to exclude the entire class of Group B discriminatees altogether and re-litigate the scope of the

Board's prior rulings. Respondent must not be permitted to re-litigate this issue, and the paucity of its pleadings again compel summary judgment under Section 102.56(c) as to the identities of the discriminatees in Group B, identified in paragraph IV(B) of the Specification.

2. There Is No Basis to Exclude Individuals Who Did Not Obtain Employment with HSS

Respondent's further assertion that these compliance proceedings must exclude individuals who were previously employed by Respondent but not hired by HSS similarly fails because the class of discriminatees has already been defined by the Board's Decision and Order. The Board determined that the class of discriminatees includes all employees discharged by Respondent on August 20, 2012, regardless of whether they secured employment with Respondent's subcontractor HSS. Nothing in the Board's Decision and Order even remotely suggests that the class of discriminatees excludes employees based on whether they were hired by HSS. Thus, Respondent's claim that these discriminatees should not be included in this compliance proceeding must fail because the issue has already been decided, and the parties may not re-litigate issues that have been decided in the underlying unfair labor practice proceeding. See *Transport Service Co.*, 314 NLRB 459, *supra*.

3. Respondent Fails to Identify Any Individuals Who Should Be Excluded from the Class of Discriminatees because They Never Worked for Either Respondent or HSS

Finally, Respondent argues that certain unidentified discriminatees "who were never employed by either Respondent or HSS" must be excluded from these proceedings. It is true that the Board's Decision and Order limits the remedy owed by Respondent to individuals employed by Respondent as of August 20, 2012 and those individuals employed by HSS as of October 19, 2012, and thus any individuals who "were never employed by Respondent or HSS" should not be included in these proceedings. However, no such person is named in Specification. Each of the named individuals worked as a housekeeping employee for either Respondent or HSS on one or

both of the 2012 dates when the Board ruled that Respondent had violated these employees' rights.

Nowhere in its Answer – or in its Opposition – does Respondent identify which employees named in the Specification “were never employed by Respondent or HSS.” Instead, as is its practice, Respondent relies on vague generalities in an effort to continually expand the number of issues to be litigated in these compliance proceedings and further delay the remedy for Respondent’s unlawful conduct. Yet here again, Section 102.56(b) of the Board’s Rules and Regulations does not permit Respondent to engage in such obfuscation and delay, but rather requires Respondent to specifically state which employees named in the Specification were not employed by either Respondent or HSS and are therefore not entitled to backpay as set forth in paragraphs IV(A), (B) and (C) of the Specification. Respondent’s failure to make such a specific pleading again must result in partial summary judgment under Section 102.56(c).

IV. Respondent Has Squandered Many Opportunities to Amend Its Answer and Should Not Be Granted Leave to Do So Now

In apparent recognition of the fact that its pleadings do not comply with the Board’s Rules and Regulations and are subject to summary judgment under Section 102.56(c), Respondent’s Opposition argues, “[i]n the alternative,” that “Respondent is entitled to amend its answer to cure any procedural defects.” The Board, however, should not permit Respondent to amend its deficient Answer in the event that its current response to the Board’s Notice to Show Cause fails to conform Respondent’s pleadings to the requirements of Section 102.56(b).

Respondent has repeatedly been given notice that its Answer must comply with the specificity requirements of Section 102.56(b). As early as June 1, 2018, when the Specification originally issued, the General Counsel advised Respondent – via the “Answer Requirement” of the Specification – that Respondent needed to specifically address each of the Specification’s

allegations and that general denials would not suffice. Respondent ignored that advisement and filed the manifestly deficient Answer at issue here. The General Counsel initially filed its Motion for Partial Summary Judgment on August 2, 2018, again highlighting the insufficiency of Respondent's pleadings. Respondent then took over two months to respond to the Motion, filing its Opposition on October 9, 2018, and that Opposition utterly fails to rectify the deficiencies of Respondent's Answer, as set forth above. By virtue of its October 11, 2018 Notice to Show Cause, the Board has given Respondent yet another chance to comply with the Board's Rules and Regulations. If, in response to Board's Notice to Show Cause, Respondent once again fails to remedy the failures of its Answer, it will reflect deliberate defiance of the Board's processes, which the Board should not reward with still another opportunity to cure.

While it is true that the Board will allow a respondent to cure defects in its answer before commencement of a compliance hearing, the Board has typically required respondents to effectuate such a cure through their responses to a Board Notice to Show Cause regarding summary judgment. See e.g., *MFP Fire Protection, Inc.*, 337 NLRB 984, 985 (2002) (denying summary judgment motion where the respondent attached an amended answer to its response to the Board's Notice to Show Cause that cured defects of the original answer); *Mining Specialists*, 330 NLRB at 100-101, fn. 12 (evaluating the sufficiency of the respondent's pleadings based on its answer in conjunction with amendments and additions to the answer filed with the response to the Board's Notice to Show Cause). The Board should thus evaluate the General Counsel's current Motion for Partial Summary Judgment based on the pleadings and contentions Respondent has set forth to date, and should not allow Respondent yet another chance fix the shortcomings in its pleadings, which it has known about for months.

Allowing Respondent still more opportunity to raise factual issues that it has failed to allege in its pleadings would only serve Respondent's apparent aim to delay and obstruct these proceedings. Respondent has repeatedly and purposefully refused to comply with Board's Rules and Regulations, despite being advised, time and again, of its non-compliance. There is no basis to allow Respondent to further delay providing a remedy for its unfair labor practices by granting it additional leave to amend the Answer, beyond the opportunity now presented by the Board's Notice to Show Cause. Thus, to the extent that Respondent's response to the Notice to Show Cause fails to meet the specificity requirements of Section 102.56(b), the Board should grant the General Counsel's Motion and preclude Respondent from litigating the accuracy of the Specification's gross backpay calculations and the premises on which they are based.

V. Conclusion

As the foregoing illustrates, Respondent's pleadings in this case do not comply with the Board's Rules and Regulations, as Respondent's vague, general denials of the allegations made in the Specification do not raise any litigable issue with respect to the General Counsel's calculation of gross backpay. Accordingly, summary judgment is warranted as to the Specification's calculation of gross backpay and all premises on which those calculations are based. The General Counsel respectfully urges the Board to grant the General Counsel's Motion for Partial Summary Judgment and issue an Order deeming the allegations set forth in paragraphs IV(A), (B) and (C) of the Specification as true without the taking of evidence supporting those allegations and precluding Respondent from introducing evidence controverting the allegations, as called for under Section 102.56(c) of the Board's Rules and Regulations.

Respectfully submitted this 25th day of October 2018.

/s/ Matthew A. Jackson

Emily A. Cabrera

Matthew A. Jackson

Counsel for the General Counsel

National Labor Relations Board, Region 29

2 Metrotech Center, 5th Floor

Brooklyn, NY 11201